

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0233
Sales and Use Tax
For the Years 1999-2000**

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ISSUES

I. Sales and Use Tax-Imposition of Sales Tax

Authority: IC 6-8.1-5-1 (b), IC 6-8.1-5-4, IC 6-2.5-2-1.

The taxpayer protests the imposition of sales tax.

II. Sales and Use Tax-Imposition of Use Tax

Authority: IC 6-2.5-3-2 (a).

The taxpayer protests the imposition of use tax on certain items.

III. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The taxpayer is a tattoo and piercing emporium featuring painless tattooing, surgical sterilization, custom work, cover ups, and body jewelry. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, use tax, interest, and penalty for the tax period 1999-2000. The taxpayer protested the assessments of sales tax, use tax, and penalty. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition of Sales Tax

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1. Taxpayers are required to keep and produce at

the department's request any books and records necessary for the department to determine the taxpayer's correct tax liability. IC 6-8.1-5-4. Indiana imposes a sales tax on the transfer of property in a retail transaction. The tax is paid by the purchaser to the seller who holds the tax money as agent for the state. IC 6-2.5-2-1.

The taxpayer's taxable sales consisted of replacement earrings and body jewelry. The taxpayer filed sales tax returns on a quarterly basis in 1999 and a monthly basis in 2000. Prior to the completion of the audit, the taxpayer filed a sales tax return for the third quarter of 1999. The taxable sales reported on this return were not consistent with the amounts filed for the other three quarters of 1999. Since the figures could not be verified with the records the taxpayer provided, the average of the three periods reported previously was used to determine the amount of taxable sales for the third quarter of 1999. The taxpayer also did not file sales tax returns for October, November, and December of 2000. The average taxable sales from the reported months were used to determine the amount of taxable sales for the missing months. The taxpayer protested this assessment contending that some of the sales were exempt from the imposition of sales tax. No documentation was presented, however, to substantiate this contention. Therefore, the taxpayer did not sustain its burden of proving that the proposed assessment of sales tax was incorrect.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Imposition of Use Tax

DISCUSSION

Complementary to the sales tax, Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana when no sales tax was paid at the time of purchase. IC 6-2.5-3-2 (a). The taxpayer made purchases from various vendors with the description listed as "supplies." The taxpayer also purchased equipment, repair parts, office supplies, and subscriptions on which the department assessed use tax. The taxpayer protested this assessment claiming that it had actually paid sales tax on some of these items at the point of purchase. In support of this contention, the taxpayer submitted documentation such as receipts indicating that sales tax was paid at the time of purchase on some of the taxed items.

FINDING

The taxpayer's protest is sustained to the extent that the documentation indicates the taxpayer actually paid sales tax at the point of purchase on any of the items on which use tax was imposed in the audit.

III. Tax Administration-Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer failed to use reasonable care in determining the amount of tax due to the state each month. Further, the taxpayer disregarded its duty to keep adequate records and present them to the state upon request. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

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